Filed 8/12/19 P. v. Haag CA4/3
Received for posting 8/13/19

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. MARLON LAWRENCE HAAG, Defendant and Appellant.	G056188 (Super. Ct. No. 17WF2604) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Julian W. Bailey, Judge. Affirmed.

Rachel Varnell, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson, Allison A. Acosta and Yvette M. Martinez, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

Defendant Marlon Lawrence Haag answered an online advertisement for escort services, and went to the victims' hotel room. He pretended to be a police officer, bound them, stole money, and departed. He was convicted of multiple counts, including first degree burglary and false imprisonment. On appeal, he argues there was insufficient evidence the hotel room was "inhabited" within the meaning of the first degree burglary statute, because the victims were using the room for "business purposes." He further contends that the court improperly instructed the jury on this issue, and finally, that punishment on the two counts of false imprisonment should have been stayed pursuant to Penal Code section 654.[1]

As to the first degree burglary count, we find there was sufficient evidence to demonstrate the room was inhabited because the victims were sleeping and conducting nonbusiness activities in the room. Further, the jury instruction on this point was legally correct. Finally, we find no error with respect to section 654, because there was sufficient evidence of separate objectives for each crime. Accordingly, we affirm the judgment.

I

FACTS

The facts are fairly straightforward. The two victims, Alicia A. and Candice C., were working as call girls as of September 2017. They worked primarily in the Anaheim area and found clients by advertising on a Web site called "Backpage."

On August 31, 2017, Candice checked into a large hotel on Harbor Boulevard in Garden Grove. Alexis arrived later. Both brought luggage.

Both women posted ads on Backpage. On September 1, defendant responded to Candice's advertisement, and arranged to meet her late in the afternoon.

[1] Subsequent statutory references are to the Penal Code.

Candice told him to call her when he arrived at the floor they were staying on, and when he did, she gave him the room number. Candice told Alicia that she was expecting a client, and Alicia went into the bathroom. She showered and was dressing when she heard a knock on the door.

The knock was defendant, and Candice let him in the room. Defendant asked Candice for one hour and offered her $250. Defendant then showed Candice a police badge, which she believed was real. He told her that she was under arrest, which she believed, and restrained her hands with zip-ties. He asked her if anyone else was in the room, and Candice told him her friend was there. She called out for Alicia.

Alicia came out of the bathroom, and saw defendant with a backpack, holding a badge. She also believed he was a police officer and that she was about to be arrested. He restrained her hands with zip-ties. Defendant told both victims to look away from him, out the window.

They heard shuffling, as if defendant was going through their things. Candice asked him where the other officers were, and defendant said they were outside. Defendant asked them where the drugs were, and both responded that they did not do drugs, they just "'smoke[d] weed.'" The victims eventually heard the door close and when they turned around, they realized defendant had left. After he left, the victims understood he was not a police officer.

Alicia freed herself from the zip-ties, and she ran after defendant, yelling that she had been robbed. A hotel employee heard her and saw her running after defendant. Defendant was detained at the scene by a hotel employee, who observed he was breathless. Defendant requested medical attention and was taken to a hospital. He left behind his backpack, which contained gloves and zip-ties. The police investigation at the scene included photographs of the hotel room, which showed the room contained luggage, clothing, personal toiletry items, and other belongings.

At the hospital, medical personnel determined defendant had suffered a panic attack. He was interviewed, then arrested. He denied the backpack found at the hotel was his. After his arrest, a nurse found $1,446 in cash at the foot of defendant's hospital bed. Alicia reported over $900 was missing from her wallet, which had been in the hotel room.

Defendant was charged with first degree residential burglary (§§ 459-460, subd. (a), count one), with the further allegation that a nonaccomplice, Alicia, was present (§ 667.5, subd. (c)(21)); first degree robbery of Alicia (§§ 211, 212.5, subd. (a), count two), attempted first degree robbery of Candice (§§ 664, subd. (a), 211, 212.5, subd. (a), count three); two counts of false imprisonment by menace, violence, fraud, or deceit (§§ 236, 237, subd. (a), counts four and five); misuse of police officer identification (§ 538d, subd. (c), count six); and grand theft (§ 487, subd. (a), count seven).

At trial, the victims did not wish to testify, but did so pursuant to a court order and a grant of immunity. Defendant also testified. Although his testimony is not particularly relevant to the issues on appeal, in sum, he admitted responding to the Backpage ad and said he brought the zip-ties because he was interested in "something a little more than just vanilla sex." After he arrived at the room and put the zip-ties and $250 on the bed, he claimed Alicia came out of the bathroom and demanded more money. He testified he was threatened with a rape accusation if he did not pay more. At that point, he said, he took the money from the bed and fled, accidentally leaving his backpack at the scene. He denied ownership of it to the police to distance himself from the incident and claimed the gloves in his backpack were for work purposes.

Defendant was convicted on counts one through six. He was sentenced to a total term of seven years and four months, which consisted of the upper term of six years on the burglary count, and consecutive terms of eight months each on the false imprisonment counts. The robbery and attempted robbery counts were sentenced

concurrently and stayed under section 654, and the court dismissed the false police identification count pursuant to section 1385.

II

DISCUSSION

Sufficient Evidence of First Degree Burglary

Defendant first contends that his convictions for first degree burglary, first degree robbery, and first degree attempted robbery must be reversed because the evidence was insufficient as a matter of law to prove the hotel room was "inhabited" within the relevant statutory meaning.

"Our role in considering an insufficiency of the evidence claim is quite limited. We . . . review the record in the light most favorable to the judgment [citation], drawing all inferences from the evidence which supports the . . . verdict." (*People v. Olguin* (1994) 31 Cal.App.4th 1355, 1382.) Substantial evidence is "evidence that is reasonable, credible, and of solid value — such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.) We presume the existence of every fact the trier of fact could have reasonably deduced from the evidence. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.)

"In deciding the sufficiency of the evidence, a reviewing court resolves neither credibility issues nor evidentiary conflicts." (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) Before a verdict may be set aside for insufficiency of the evidence, a party must demonstrate "'that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].'" (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

We begin with the statutory framework. "Every person who enters any house, room, apartment . . . with intent to commit grand or petit larceny or any felony is guilty of burglary. As used in this chapter, 'inhabited' means currently being used for dwelling purposes, whether occupied or not." (§ 459.) "Every burglary of an inhabited

dwelling house . . . or the inhabited portion of any other building, is burglary of the first degree." (§ 460, subd. (a).) Robbery is defined as "the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear." (§ 211; see *People v. Clark* (2011) 52 Cal.4th 856, 944.) A "robbery which is perpetrated in an inhabited dwelling house . . . or the inhabited portion of any other building is robbery of the first degree." (§ 212.5, subd. (a).)

"The terms 'inhabited dwelling house' or 'inhabited portion of any other building' have the same meaning in both the robbery and burglary statutes." (*People v. Villalobos* (2006) 145 Cal.App.4th 310, 316 (*Villalobos*).)

Inhabited dwelling house has been defined broadly. (*People v. Cruz* (1996) 13 Cal.4th 764, 776.) The rationale for this is that "[v]ictims inside buildings are more vulnerable to felonious conduct than victims out of doors" and that "victims inside their residences are especially vulnerable. . . ." (*People v. Fleetwood* (1985) 171 Cal.App.3d 982, 987 (*Fleetwood*).) Moreover, "'it is the element of habitation, not the nature of the structure that elevates the crime of burglary to first degree.'" (*People v. Trevino* (2016) 1 Cal.App.5th 120, 125.)

Among others, burglaries at the following locations have been determined to be of the first degree: A recreational vehicle (*People v. Trevino*, *supra,* 1 Cal.App.5th 120); a tent (*People v. Wilson* (1992) 11 Cal.App.4th 1483); a hospital room (*People v. Fond* (1999) 71 Cal.App.4th 127, 131-132); a home during a realtor's open house (*People v. Tessman* (2014) 223 Cal.App.4th 1293, 1297); a vacation home and trailer *(People v. DeRouen* (1995) 38 Cal.App.4th 86, 89-90, overruled on another ground by *People v. Allen* (1999) 21 Cal.4th 846, 864-866); and a jail cell (*People v. McDade* (1991) 230 Cal.App.3d 118, 127-128).

In *Fleetwood*, *supra,* 171 Cal.App.3d at page 986, the court determined an occupied hotel room also qualified as a dwelling house under the pertinent statute. The

facts bore similarity to those present here. The victim had lived in a "boarding hotel" for one to two weeks when the defendant kicked in her door, demanded money from the victim and her customer, and wounded each of them with a knife before escaping with a small amount of money. (*Id.* at pp. 985, 989.) The court concluded that the "'inhabited dwelling house'" language in the pertinent robbery statute included the "'inhabited portion of any other building.'" (*Id.* at p. 988.) The court rejected the defendant's argument that because the room was furnished with only two mattresses and a television set, "it was not a dwelling, but a place of business." (*Id.* at p. 989.) The court found the evidence demonstrated that the victim had been living in the hotel room when the crimes occurred for approximately one to two weeks, and had paid rent in advance. This was sufficient evidence from which a jury could determine the room was used as a residence as well as a place of business. (*Id.* at pp. 989-990.)

In *Villalobos, supra*, 145 Cal.App.4th 310, the male victim checked into a motel room and used methamphetamine, with the intent to "'party'" later on with a female acquaintance. (*Id.* at p. 314.) He was eventually assaulted and robbed by defendant, who claimed on appeal that a motel room rented on a transient or temporary basis was not "inhabited" within the meaning of the first degree robbery and burglary statutes. (*Id.* at p. 317.) In reviewing both the case law and the history and intent of the statutes involved, the court concluded that a motel room did come within the statute's meaning. The same considerations that applied to other residences, the court found, "apply to a hotel room, even if it is rented for only one night. People have an expectation of freedom from unwarranted intrusions into a room in which they intend to store their

personal belongings, sleep, dress, bathe and engage in other intimate, personal activities."[2] (*Id.* at p. 318.)

A hotel room, however, could also be occupied without being inhabited. "[A] motel room can be rented as a place to transact business, licit or illicit . . . . It is also not uncommon for people to rent motel rooms to conduct legitimate business meetings or transactions. The rooms are 'occupied' while these transactions or meetings take place, but they are not 'inhabited' unless, as in *Fleetwood*, they are also being used as a place of repose." (*Villalobos*, *supra*, 145 Cal.App.4th at p. 321.) Thus, whether a hotel room was inhabited or not would turn on the facts of the particular case.

In *People v. Long* (2010) 189 Cal.App.4th 826, 831-832 (*Long*), the victim, again a prostitute, had checked into a hotel room around noon and saw other customers before the defendant arrived in the evening. He robbed her before threatening her not to call the police, and departing. (*Ibid.*) On a second occasion, she had checked into a different hotel during the day and saw several customers before she opened the door to find defendant standing outside. He robbed and raped her. (*Id.* at p. 833.) Relying on the language in *Villalobos* concerning occupied versus inhabited hotel rooms, the defendant contended that the evidence "proved merely that the victim was occupying the hotel rooms in order to ply her trade, but not that she inhabited either room. '[T]here was no evidence that Doe had luggage, an overnight bag, or other belongings that would indicate she was inhabiting the motel rooms as opposed to just working out of them.'" (*Id.* at p. 836.)

The court wrote that "a popular test for whether a building is 'inhabited' is whether someone is using it as a temporary living quarters; in other words, whether the

[2] The *Villalobos* court also disagreed with the defendant's contention that an intent to return was a critical element in determining if a location was an inhabited dwelling, finding that language in earlier cases had been taken out of contexts by some courts. (*Villalobos*, *supra*, 145 Cal.App.4th at pp. 318-320.)

building is serving as the functional equivalent of a home away from home. This characterization should be made from the perspective of the victim [citation], not the criminal . . . ." (*Long*, *supra*, 189 Cal.App.4th at p. 837.) In *Long*, the prosecution had not introduced much evidence on the status of the victim's occupancy of the two hotel rooms. The victim "did not recall exactly when she arrived, but it was in the daytime. She had some customers before defendant arrived. The prosecutor did not ask [the victim] if she had prepaid for either room, how long she intended to stay, how long she customarily stayed, what she brought to each room, or whether she intended to do anything in either room other than engage in prostitution." (*Ibid.*)

The court found substantial evidence to uphold the judgment. There was evidence that a friend had "visited her three or four nights in a row in hotels and sometimes brought her meals. That [the victim] was dining in and socializing at hotels on other occasions is substantial evidence that she was not using the hotel rooms simply as places of business or offices, but as temporary living quarters. There was no evidence of her sleeping at a hotel, but that is merely one circumstance among many relevant to showing habitation." (*Long*, *supra*, 189 Cal.App.4th at p. 838.)

In the instant case, there is substantial evidence to conclude that the victims were inhabiting the hotel room, regardless of whether they were also using it to conduct prostitution. There was evidence in the form of a hotel invoice that Candice had checked into the hotel on August 31 and stayed for two nights.[3] From this, a jury could have reasonably inferred the victims spent the night at the hotel, which alone would be sufficient to determine habitation. As the court noted in *Villalobos*, *supra*, 145 Cal.App.4th at page 319, "'We are at our most vulnerable when we are asleep because we cannot monitor our own safety or the security of our belongings. It is for this reason that, although we may spend all day in public places, when we cannot sleep in our own home

[3] Both victims had trouble recalling the date they checked in, but the hotel invoice was received into evidence without objection.

we seek out another private place to sleep, whether it be a hotel room, or the home of a friend. . . .'" That court further stated that while a hotel room used for business purposes might be "'occupied'" without being "'inhabited,'" it may still be an "inhabited dwelling" if it is "also being used as a place of repose." (*Id.* at p. 321.)

Further, there was other evidence supporting that the room was being used for more than to merely transact illicit business. The victims also brought luggage with them, indicating that they intended to spend time, dress and bathe there. Alicia testified that she showered and dressed in the room before defendant arrived. The photo exhibits show toiletries, drinks, a phone charger, and other indications that the victims were using the room as "a home away from home." (*Long*, *supra*, 189 Cal.App.4th at p. 837.) Taken together, and viewed in a light most favorable to the judgment, we conclude there was sufficient evidence of habitation to support the jury's verdict.

Instructional Error

Defendant next contends his convictions for first degree burglary, first degree robbery, and first degree attempted robbery must be reversed because the jury instructions directed the jury that an occupied hotel room was inhabited.

Based on CALCRIM No. 1701, the trial court gave the following instruction on burglary: "First degree burglary is the burglary of an inhabited part of a building. A part of a building is inhabited if someone uses it as a dwelling, whether or not someone is inside at the time of the alleged entry, and this includes an occupied hotel room." As to the nonaccomplice allegation, the court instructed: "If you find the defendant guilty of first degree residential burglary as charged in Count 1 you must then decide whether or not the People have proved the additional allegation that a non-accomplice, Alicia . . . , was present in the residence at the time of the burglary."

On first degree robbery, the court instructed with CALCRIM No. 1602: "To prove that the defendant is guilty of first degree robbery, the People must prove that

the robbery was committed in an inhabited dwelling. A dwelling is inhabited if someone lives there and either is present or has left but intends to return. All other robberies are of the second degree."

We review jury instructions de novo. (*People v. Posey* (2004) 32 Cal.4th 193, 218.) "Even absent a request, the trial court must instruct on the general principles of law applicable to the case." (*People v. Young* (2005) 34 Cal.4th 1149, 1200.) "In reviewing a challenge to jury instructions, we must consider the instructions as a whole. [Citations.] We assume that the jurors are capable of understanding and correlating all the instructions which are given to them." (*People v. Fitzpatrick* (1992) 2 Cal.App.4th 1285, 1294.) Absent some indication to the contrary, we presume the jury followed the court's instructions and that its verdict reflects the limitations the instructions imposed. (See *People v. Bradford* (1997) 15 Cal.4th 1229, 1336-1337.)

Defendant takes issue with the burglary instruction, specifically the portion that read: "'A part of a building is *inhabited* if someone uses it as a dwelling whether or not someone is inside at the time of the alleged entry, and this includes an occupied hotel room.'" He argues that "[t]he wording of the instruction indicates that a building or part of a building is inhabited for the purposes of burglary if someone uses it as a dwelling, whether or not someone is inside at the time of entry, and this includes an occupied hotel room. A jury would likely hear and/or read this instruction as meaning that an occupied hotel room qualifies as an inhabited dwelling."

We disagree. The language of the instruction was based on CALCRIM No. 1701, which instructs on the degrees of burglary. It offers several verbiage options based on the particular facts of the case. The unmodified second paragraph reads: "A (house/vessel/floating home/trailer coach/part of a building) is *inhabited* if someone uses it as a dwelling, whether or not someone is inside at the time of the alleged entry." (CALCRIM No. 1701.) The court modified the language appropriately and added "and this includes an occupied hotel room."

To us, it reads as if the court is attempting to distinguish a *vacant* hotel room, where any burglary would necessarily be second degree. Thus, the court is instructing the jury that if someone uses "part of the building" "as a dwelling" then an *occupied* hotel room may qualify. Defendant's interpretation ignores this earlier part of the sentence, and we disagree with his argument that the instruction necessarily equates occupancy with habitation. As given, it was a correct statement of the law and did not, as defendant contends, lower the burden of proof. Accordingly, we find no "'reasonable likelihood' that the jury misconstrued or misapplied the law in light of the instructions." (*People v. Dieguez* (2001) 89 Cal.App.4th 266, 276.)

Section 654

Section 654, subdivision (a), states "[a]n act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." Generally under section 654, a defendant may only be sentenced once for crimes completed by a single physical act or in pursuit of a single criminal objective. (*People v. Corpening* (2016) 2 Cal.5th 307, 311.)

"[I]f the evidence discloses that a defendant entertained multiple criminal objectives which were independent of and not merely incidental to each other, the trial court may impose punishment for independent violations committed in pursuit of each objective even though the violations shared common acts or were parts of an otherwise indivisible course of conduct. [Citations.] The principal inquiry in each case is whether the defendant's criminal intent and objective were single or multiple. Each case must be determined on its own facts. [Citations.] The question whether the defendant entertained multiple criminal objectives is one of fact for the trial court, and its findings on this question will be upheld on appeal if there is any substantial evidence to support them." (*People v. Liu* (1996) 46 Cal.App.4th 1119, 1135-1136.)

Defendant argues that because he zip-tied the victims' hands as soon as he entered the room, his intent was to effectuate the burglary, not to prevent their subsequent escape.[4] But the facts are sufficient for a reasonable trier of fact to determine that defendant harbored more than one objective by restraining the victims. The Attorney General analogizes this case to *People v. Foster* (1988) 201 Cal.App.3d 20, 27-28, where the defendant locked the victims in a cooler after the robbery. In that case, the court found that section 654 did not apply. Defendant points out that in *Foster*, the robber locked the victims in the cooler after the robbery had taken place, whereas here, defendant zip-tied their hands before the burglary. While this is true, we do not find the temporal distinction to be determinative; we must look to all the surrounding facts.

The defendant here was posing as a police officer, and the Attorney General argues this alone was sufficient to keep the victims complacent while he conducted the burglary. Defendant deems this argument "nonsensical, as there is no reason an officer placing the women under arrest would need to rifle through and steal their belongings." But as anyone who watches television is aware, police officers often conduct searches. There was no reason for the victims to immediately believe they were being burglarized because defendant was looking through their belongings. Because he successfully, according to the undisputed testimony, used the false identity of a police officer to intimidate the victims, there was no immediate and obvious need to restrain them to complete the robbery.

The advantage the zip-ties obviously provided defendant, therefore, was to prevent the victims' escape and to delay their opportunity to report the crime. Accordingly, there was sufficient evidence of a separate and distinct intent, and we find no error in the court's determination that section 654 should not apply here.

---

[4] Given that we find sufficient evidence of a separate intent, we need not consider the applicability of the multiple victim exception to section 654.

III

DISPOSITION

The judgment is affirmed.

MOORE, J.

WE CONCUR:

O’LEARY, P. J.

FYBEL, J.